

From: [Jensen, Stacey M HQ02](#)
To: [Kaiser, Russell](#)
Cc: [Kwok, Rose](#)
Subject: RE: [EXTERNAL] RE: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)
Date: Friday, December 05, 2014 3:06:01 PM

Classification: UNCLASSIFIED
Caveats: NONE

Great; thanks!

Best wishes,
Stacey

HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314-1000
Phone (202) 761-5856

-----Original Message-----

From: Kaiser, Russell [<mailto:Kaiser.Russell@epa.gov>]
Sent: Friday, December 05, 2014 12:37 PM
To: Jensen, Stacey M HQ02
Cc: Kwok, Rose
Subject: [EXTERNAL] RE: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)

Stacey - I believe the clock expired on us and we are not going to challenge. That info was shared also with the Region.

Thanks

Russell L. Kaiser

Chief, Wetlands & Aquatic Resources Regulatory Branch

1301 Constitution Ave., N.W.

Room 7217M West Bldg.

Washington, DC 20004

P: 202.566.0963

From: Jensen, Stacey M HQ02 [<mailto:Stacey.M.Jensen@usace.army.mil>]

Sent: Friday, December 05, 2014 9:17 AM
To: Kaiser, Russell
Cc: Kwok, Rose
Subject: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Russ,

Can you please confirm that HQ EPA is not accepting the elevated JD, SWG-2013-00982, for review by HQ, and that the district determination stands? If EPA does not agree then EPA must submit an HQ level decision memo explaining your rationale in support of an approved JD to be provided to EPA and Corps field offices. Such memo was to be completed within 21 calendar days of initiation of our interagency discussions, which began on November 5, 2014. The 21 calendar day timeframe ended on November 25, 2014. Please let me know if EPA will be drafting such a decision memo or if EPA has chosen not to accept the elevated JD from the EPA Region and will concur with the SWG district determination as soon as possible. Thank you!

Best wishes,

Stacey

HQUSACE Regulatory Program Manager

441 G Street NW

Washington, DC 20314-1000

Phone (202) 761-5856

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

From: [Kaiser, Russell](#)
To: [Jensen, Stacey M HQ02](#)
Cc: [Kwok, Rose](#)
Subject: RE: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)
Date: Friday, December 05, 2014 12:36:34 PM

Stacey - I believe the clock expired on us and we are not going to challenge. That info was shared also with the Region.

Thanks

Russell L. Kaiser
Chief, Wetlands & Aquatic Resources Regulatory Branch
1301 Constitution Ave., N.W.
Room 7217M West Bldg.
Washington, DC 20004
P: 202.566.0963

From: Jensen, Stacey M HQ02 [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Friday, December 05, 2014 9:17 AM
To: Kaiser, Russell
Cc: Kwok, Rose
Subject: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)
Classification: UNCLASSIFIED
Caveats: NONE

Russ,

Can you please confirm that HQ EPA is not accepting the elevated JD, SWG-2013-00982, for review by HQ, and that the district determination stands? If EPA does not agree then EPA must submit an HQ level decision memo explaining your rationale in support of an approved JD to be provided to EPA and Corps field offices. Such memo was to be completed within 21 calendar days of initiation of our interagency discussions, which began on November 5, 2014. The 21 calendar day timeframe ended on November 25, 2014. Please let me know if EPA will be drafting such a decision memo or if EPA has chosen not to accept the elevated JD from the EPA Region and will concur with the SWG district determination as soon as possible. Thank you!

Best wishes,

Stacey

HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314-1000
Phone (202) 761-5856
Classification: UNCLASSIFIED
Caveats: NONE

From: Jensen, Stacey M HQ02
To: Kaiser, Russell
Cc: Kwok, Rose
Subject: Elevation of Jurisdictional Determination SWG-2013-00982 (UNCLASSIFIED)
Date: Friday, December 05, 2014 9:17:35 AM

Classification: UNCLASSIFIED

Caveats: NONE

Russ,

Can you please confirm that HQ EPA is not accepting the elevated JD, SWG-2013-00982, for review by HQ, and that the district determination stands? If EPA does not agree then EPA must submit an HQ level decision memo explaining your rationale in support of an approved JD to be provided to EPA and Corps field offices. Such memo was to be completed within 21 calendar days of initiation of our interagency discussions, which began on November 5, 2014. The 21 calendar day timeframe ended on November 25, 2014. Please let me know if EPA will be drafting such a decision memo or if EPA has chosen not to accept the elevated JD from the EPA Region and will concur with the SWG district determination as soon as possible. Thank you!

Best wishes,

Stacey

HQUSACE Regulatory Program Manager

441 G Street NW

Washington, DC 20314-1000

Phone (202) 761-5856

Classification: UNCLASSIFIED

Caveats: NONE

From: [REDACTED] SAJ
To: Jensen, Stacey M HQ02; Kwok, Rose
Subject: Trendmaker JD discussion with EPA (UNCLASSIFIED)
Start: Wednesday, November 05, 2014 10:30:00 AM
End: Wednesday, November 05, 2014 11:30:00 AM
Location: Team Room B-8

hen: Wednesday, November 05, 2014 10:30 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Team Room B-8

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

From: Kwok, Rose
To: [REDACTED]
Subject: RE: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
(UNCLASSIFIED)
Date: Friday, October 31, 2014 5:35:00 PM

Hi [REDACTED]

Thanks for your note! I have been meaning to email Stacey, but I have been so busy that I didn't have the chance to get around to it. I could try to stay for an extra hour after our Wednesday meeting. Thanks!

Rose

-----Original Message-----

From: [REDACTED]@usace.army.mil]
Sent: Friday, October 31, 2014 9:01 AM
To: Kwok, Rose
Subject: FW: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
(UNCLASSIFIED)
Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

Rose:

I understand this has been elevated, I was wondering if you could stay behind after our jurisdictional/EA meeting next week to discuss this with Stacey and I? I could block the room for an extra hour, say 1030-1130?

Thanks
[REDACTED]

[REDACTED]
Environmental Protection Specialist
Temporary, Regulatory Program Headquarters
441 G Street, NW
Washington, DC 20314-1000
Phone: 202-761-4599
[REDACTED]@usace.army.mil

-----Original Message-----

From: Isolated Waters
Sent: Tuesday, October 07, 2014 3:54 PM
To: Jensen, Stacey M HQ02
Subject: FW: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
(UNCLASSIFIED)
Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

Best wishes,
Stacey

HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314-1000
Phone (202) 761-5856

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, October 07, 2014 1:13 PM
To: Isolated Waters; [REDACTED]
Cc: [REDACTED]
Subject: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
Importance: High

****NOTE:** I will be out of the office from 8 Oct thru 20 Oct any questions need to be send to [REDACTED] ******

Folks;

The purpose of this e-mail is to begin the coordination required for SWG draft non-jurisdictional determination for file SWG-2013-00982; for 51 isolated wetland polygons. This e-mail initiates the coordination process with the EPA as required by the Rapanos Guidance for finalizing jurisdictional determination for purposes of Section 404 of the Clean Water Act and "isolated" non-jurisdictional wetland determinations. NOTE: as of the date of this coordination much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.

This approximate 370 acre project area is located east of Ellington Field in League City area of Harris County, Texas. The majority of the site has been landcleared and some detention basins have been constructed. This includes an appx 30 acre tract, located south of the pipeline easement that has not been landcleared. This small portion of the site has a mix of tallow dominated areas and open herbaceous seasonal prairie and has appx. 6 wetland polygons that total an appx 1.8 acres. This entire project area historically contained mostly upland prairie with a mix of seasonal depressional wetlands (some of which were dominated with tallow trees). It has been and continues to have portions being used for graze land. The source of hydrology for the wetlands on the site is precipitation. The wetland are seasonal and depressional. The soils are mapped as clay loams and clays; thus affecting lateral movement of shallow subsurface hydrology.

Since the majority of the site has been impacted by the mechanized land-clearing much of the extents of the wetlands were based upon off-site information in conjunction with four separate field visits conducted by the Corps. (NOTEWORTHY: a previous field visit was conducted by the Corps and EPA {Jim Herrington} to investigate a purported unauthorized activity which was found to not be an unauthorized activity.) The appx. wetland polygons and sizes varied from appx. 0.02 acre to greater than appx. 7 acres (noting greater than 80% are less than an acre in size); with an estimated aggregate total of appx. 49 acres. The distance to the nearest water of the U.S. (a RPW of Horsepen Bayou) varied from appx. 0.4 mile to greater than 1.3 miles. The appx. distances to the nearest TNW (Armand Bayou) would be appx. 1.3 miles and the furthest would be appx. 2.2 miles. The entire site was examined and based on site information and off-site information there were not any confined surface hydrologic connections nor any shallow subsurface hydrologic connections (based on sampling) detected. All of these appx. 51 wetlands are located outside the anticipated high flow (above the 100-year flood plain of any water of the U.S.). If there were ever to occur any "fill and spill" that might provide hydrology to any waters of the U.S., it would have to be through overland sheet flow, and it would be for extremely brief and episodically events that would occur in extreme above normal circumstances/conditions.

Historically, there have been concerns expressed regarding the fact that recent scientific reports revealed that isolated (as per federal regulations) depressional seasonal wetlands similar to these, provide sinks that fixate N and P and/or effect the water budget; to address this concern it is SWG position that there are numerous other factors that also play into these determinations. Therefore, based on the fact that these geographically isolated wetland that are not "inseparably bound-up" to the nearest TNW, it would be purely speculative to state that the destruction of these wetlands would have more than speculative or insubstantial effect upon the chemical, physical and/or biological integrity of the nearest TNW located greater than 1 mile away.

This determination is based on off-site analysis, numerous site visit, LIDAR, review of the consultant report, rules and regulations; it is SWG position that while there are numerous wetlands (appx 51) they are "isolated" and do not have any no-known nexus to interstate commerce; as such, they are waters of the U.S. subject to federal jurisdiction under Section 404 of the Clean Water Act.

These wetlands (as identified per the manual) are located outside any anticipated high flow (e.g. 100-yr floodplain) of any waters of the U.S., are surrounded by uplands, are not tidal, and are not located in an ecological landscape position that would be utilized for any known species in the geo-region that would require both the wetland and the water body to fulfill their life cycle requirements. These wetlands are located greater than a mile away from the nearest water body. There are not any surface hydrologic connections to any waters of the U.S., these wetlands are not located in a geomorphic position that is inseparably bound to any water of the U.S. nor is there any known biological species in this geo-region that requires both the wetland in review and the nearest TNW to full life cycle requirements.

Attached is the aerial photo & USGS map indicated the approximate location of each of these wetlands plus the required JD form and table for the appx. center and size for each wetland polygon.

In conclusion, the Corps has verified that the majority of the site is uplands and there are some pockets of depressional seasonal wetlands on the tract by using on-site and off-site information per the appropriate manual. The wetlands are located in an "isolated" (as defined by federal regulation: 33 CFR 330.2 Definitions:(e) Isolated waters means those non-tidal waters of the U.S. that are:(1) Not part of a surface tributary system to interstate or navigable waters of the US; and (2) Not adjacent to such tributary waterbodies). There is no known nexus to interstate commerce associated with any of them. As such, it is the Corps draft determination that these wetlands would not be subject to federal jurisdiction under Section 404 of the Clean Water Act. Noting as of the date of this e-mail much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.



SWG POC

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

From: [REDACTED] SAJ
To: Kwok, Rose
Subject: FW: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
(UNCLASSIFIED)
Date: Friday, October 31, 2014 9:00:58 AM
Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

Rose:

I understand this has been elevated, I was wondering if you could stay behind after our jurisdictional/EA meeting next week to discuss this with Stacey and if I could block the room for an extra hour, say 1030-1130?

Thanks

[REDACTED]

[REDACTED]
Environmental Protection Specialist
Temporary, Regulatory Program Headquarters
441 G Street, NW
Washington, DC 20314-1000
Phone: 202-761-4599
[REDACTED]@usace.army.mil

-----Original Message-----

From: Isolated Waters
Sent: Tuesday, October 07, 2014 3:54 PM
To: Jensen, Stacey M HQ02
Subject: FW: 51 isolated, non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)
(UNCLASSIFIED)
Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

Best wishes,
Stacey

HQUSACE Regulatory Program Manager
441 G Street NW
Washington, DC 20314-1000
Phone (202) 761-5856

-----Original Message-----

From: [REDACTED] SWG
Sent: Tuesday, October 07, 2014 1:13 PM

To: Isolated Waters; Parrish, Sharon

Cc: [REDACTED]

Subject: 51 isolated non-jurisdictional wetlands: file SWG-2013-00982; TRENDMAKER - (wetlands 1-51)

Importance: High

****NOTE:** I will be out of the office from 8 Oct thru 20 Oct any questions need to be send to [REDACTED] ******

Folks;

The purpose of this e-mail is to begin the coordination required for SWG draft non-jurisdictional determination for file SWG-2013-00982; for 51 isolated wetland polygons. This e-mail initiates the coordination process with the EPA as required by the Rapanos Guidance for finalizing jurisdictional determination for purposes of Section 404 of the Clean Water Act and "isolated" non-jurisdictional wetland determinations. NOTE: as of the date of this coordination much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.

This approximate 370 acre project area is located east of Ellington Field in League City area of Harris County, Texas. The majority of the site has been landcleared and some detention basins have been constructed. This includes an appx 30 acre tract, located south of the pipeline easement that has not been landcleared. This small portion of the site has a mix of tallow dominated areas and open herbaceous seasonal prairie and has appx. 6 wetland polygons that total an appx 1.8 acres. This entire project area historically contained mostly upland prairie with a mix of seasonal depressional wetlands (some of which were dominated with tallow trees). It has been and continues to have portions being used for graze land. The source of hydrology for the wetlands on the site is precipitation. The wetland are seasonal and depressional. The soils are mapped as clay loams and clays; thus affecting lateral movement of shallow subsurface hydrology.

Since the majority of the site has been impacted by the mechanized land-clearing much of the extents of the wetlands were based upon off-site information in conjunction with four separate field visits conducted by the Corps. (NOTEWORTHY: a previous field visit was conducted by the Corps and EPA {Jim Herrington} to investigate a purported unauthorized activity which was found to not be an unauthorized activity.) The appx. wetland polygons and sizes varied from appx. 0.02 acre to greater than appx. 7 acres (noting greater than 80% are less than an acre in size); with an estimated aggregate total of appx. 49 acres. The distance to the nearest water of the U.S. (a RPW of Horsepen Bayou) varied from appx. 0.4 mile to greater than 1.3 miles. The appx. distances to the nearest TNW (Armand Bayou) would be appx. 1.3 miles and the furthest would be appx. 2.2 miles. The entire site was examined and based on site information and off-site information there were not any confined surface hydrologic connections nor any shallow subsurface hydrologic connections (based on sampling) detected. All of these appx. 51 wetlands are located outside the anticipated high flow (above the 100-year flood plain of any water of the U.S.). If there were ever to occur any "fill and spill" that might provide hydrology to any waters of the U.S., it would have to be through overland sheet flow, and it would be for extremely brief and episodically events that would occur in extreme above normal circumstances/conditions.

Historically, there have been concerns expressed regarding the fact that recent scientific reports revealed that isolated (as per federal regulations) depressional seasonal wetlands similar to these, provide sinks that fixate N and P and/or effect the water budget; to address this concern it is SWG position that there are numerous other factors that also play into these determinations. Therefore, based on the fact that these geographically isolated wetland that are not "inseparably bound-up" to the nearest TNW, it would be purely speculative to state that the destruction of these wetlands would have more than speculative or insubstantial effect upon the chemical, physical and/or biological integrity of the nearest TNW located greater than 1 mile away.

This determination is based on off-site analysis, numerous site visit, LIDAR, review of the consultant report, rules and regulations; it is SWG position that while there are numerous wetlands (appx 51) they are "isolated" and do not have any no-known nexus to interstate commerce; as such, they are waters of the U.S. subject to federal jurisdiction under Section 404 of the Clean Water Act.

These wetlands (as identified per the manual) are located outside any anticipated high flow (e.g. 100-yr floodplain) of any waters of the U.S., are surrounded by uplands, are not tidal, and are not located in an ecological

landscape position that would be utilized for any known species in the geo-region that would require both the wetland and the water body to fulfill their life cycle requirements. These wetlands are located greater than a mile away from the nearest water body. There are not any surface hydrologic connections to any waters of the U.S., these wetlands are not located in a geomorphic position that is inseparably bound to any water of the U.S. nor is there any known biological species in this geo-region that requires both the wetland in review and the nearest TNW to full life cycle requirements.

Attached is the aerial photo & USGS map indicated the approximate location of each of these wetlands plus the required JD form and table for the appx. center and size for each wetland polygon.

In conclusion, the Corps has verified that the majority of the site is uplands and there are some pockets of depressional seasonal wetlands on the tract by using on-site and off-site information per the appropriate manual. The wetlands are located in an "isolated" (as defined by federal regulation: 33 CFR 330.2 Definitions:(e) Isolated waters means those non-tidal waters of the U.S. that are:(1) Not part of a surface tributary system to interstate or navigable waters of the US; and (2) Not adjacent to such tributary waterbodies). There is no known nexus to interstate commerce associated with any of them. As such, it is the Corps draft determination that these wetlands would not be subject to federal jurisdiction under Section 404 of the Clean Water Act. Noting as of the date of this e-mail much of this appx. 370 acre site has been impacted & filled and it is the Corps draft determination that these are non-jurisdictional wetlands and as such a non-permitted violation of Section 404 of the Clean water Act does not exist.


SWG POC

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE